

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

Th8c

Filed: 10/16/02
49th day: 12/04/02
49 Day Waiver: 10/28/02
180 Day: 04/14/03
Staff: SAM- SC
Staff report: 11/21/02
Hearing date: 12/12/02

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local government:Monterey County

Local Decision:Resolution 02-336 (PLN010280) Approved with conditions September 24, 2002 by the Monterey County Board of Supervisors (See Exhibit C).

Appeal NumberA-3-MCO-02-083

Applicant.....Karl & Lisa Kleissner

Appellants:.....HOPE- Helping Our Peninsula's Environment.

Project location.....East of Highway 1 @ Garrapatta Canyon (approx. Post Mile 63 of Hwy. 1), Big Sur Planning Area (Monterey County) APN(s) 417-021-035 and 417-021-038 (See Exhibits A & B).

Project description.....Road repairs and improvements including placement of graded material, retaining structures, culvers energy dissipaters, creek crossings, and underground utility lines. Also after-the-fact improvements to existing access roads (approx. 2.5 miles in length) consisting of grading, removal of debris, road widening and embankments, multiple culverts and energy dissipaters, retaining walls, a gabion basket drainage crossing; underground utility lines and related work adjacent to Joshua Creek; improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five culverts, four Hilfiker retaining walls, and concrete paving of two steep areas.

File documents.....County coastal permit file PLN010280; Monterey County Board of Supervisors Resolution # 02-236; Monterey County Local Coastal Program, including *Big Sur Land Use Plan* and *Monterey County Coastal Implementation Plan*.

Staff recommendation ...Project raises No Substantial Issue.



California Coastal Commission
December 12, 2002 Meeting in San Francisco

Staff: SAM Approved by:

C:\DOCUME~1\mfrum\LOCALS~1\Temp\A-3-MCO-02-083 (Kleissner Road) SI stfrp 11.21.02.doc

Summary of Staff Recommendation:

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. Staff has determined that the project approved by Resolution # 02-336 (PLN010280), which includes 23 special conditions established by the Monterey County Board of Supervisors, generally conforms to the standards set forth in the Monterey County Certified Local Coastal Program, which includes the Big Sur Land Use Plan, the Coastal Implementation Plan Part 3 – Regulations for Development in the Big Sur Land Use Plan Area, and Title 20 (Zoning Ordinance).

The project is located in the Big Sur planning area of Monterey County (Project vicinity and site location maps are shown in Exhibits A and B, respectively). The County's Action allows for an after the fact coastal development permit for grading, retaining structures, road widening, underground utility lines and concrete paving of two areas of an existing access road. Work was originally begun without a coastal development permit in response to 1998 el niño storms, which rendered the upper road impassable due to a landslide. The project includes development within 100 feet of environmentally sensitive habitat, including Joshua Creek and associated riparian vegetation, and development on slopes greater than 30%, some of which is located within the critical viewshed of Highway One.

The County prepared on site mitigation for project impacts, and a mitigation monitoring plan agreement is required as a condition of approval. Required mitigations include: planting of manzanita plants and eradication of invasive species; protection of Redwood tree root systems; replacement of riparian vegetation on a 1:1 basis with a 100% success criterion; completion of road improvements in accordance with the Watershed Management Plan and hydrology and drainage reports; removal of water tanks to minimize surface water diversion, and to plant 1,126 seacliff buckwheat plants and to retain a qualified biologist to identify and mark all sensitive plants to be avoided during construction.

Following County approval, Resolution # 02-336 was subsequently appealed to the Coastal Commission by HOPE- Helping Our Peninsula's Environment on October 15, 2002. The appellant contends, among other things, that (1) the project has damaged ESHA; (2) that the roadway has been expanded; (3) the process was unfair, and (4) that no certified engineering geology report was prepared for this project.

The LCP requires protection of ESHA, among other ways, by prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The project is, for the most part, consistent with these requirements because all ESHA areas have been placed in a conservation easement, and development adjacent to ESHA is consistent with its long-term viability because it reduces the likelihood of catastrophic road failure in the future that could impact both ESHA areas and adjacent areas. Although the project includes non-resource development in ESHA and allows for a large amounts of grading, the project includes mitigation in the form of restoration of disturbed ESHA, state-of-the-art erosion control methods and a requirement to continue work in accordance with a Watershed Management Plan, hydrology and drainage plans will help prevent further impacts to ESHA.

The LCP also requires protection of visual resources by requiring new development to minimize



alteration to natural landforms and to be subordinate to and harmonize with the natural setting. The LCP also protects visual resources by requiring structures to be sited and designed to blend in with the natural setting, and for screening of new development in the critical viewshed on the eastern side of Highway 1. This project is consistent with these requirements because the majority of the roadway is not greater in width than what existed previously, thus improvements have not required a substantial amount of landform alteration. Additionally, areas that have been widened are not visible from Highway One, are not in the critical viewshed, and are proposed for native plant restoration. The option of relocating the roads onto another area of the properties would include substantial adverse impacts to the viewshed and not be the most protective of natural resources. With respect to the rural character and general peace of the Big Sur area, the project is consistent because it remains an unpaved, one-lane access road and has incorporated restoration measures and erosion measures to reduce sedimentation in the future.

The appellant also contends that the County process was unfair and that the required geotechnical report was not prepared. The LCP does not contain any specific policies regarding the mailing of staff reports for Board hearings, although proper noticing of hearings is required. The appellant was noticed prior to the Board of Supervisors hearing via mail, and the notice was posted in the newspaper and at the site as well. The appellant was in attendance at that hearing, at which he requested a continuance that was denied. Additionally, Geoconsultants Inc. prepared the required geotechnical report, dated November 5, 2001, and it was attached to the Initial Study, circulated in June and July of 2002.

As discussed in the substantial issue section of this report, the approved project is generally consistent with applicable regulations for development as established by the Monterey County Local Coastal Plan (LCP). With regard to the issues raised by the appeal, the evidence in the record shows that they were satisfactorily addressed by the County. Therefore the appellant's contentions raise no substantial issue with respect to policies of the LCP.

Staff Report Contents

Summary of Staff Recommendation.....	2
I. Local Government Action.....	4
II. Summary of Appellant's Contentions.....	4
III. Standard of Review for Appeals	5
IV. Staff Recommendation on Substantial Issue.....	5
V. Recommended Findings and Declarations.....	6
A. Project Description and Location.....	6
B. Analysis of Appeal Issues	7
1. Environmentally Sensitive Habitat Resources	7
A. Appellant's Contentions	7
B. Local Coastal Program Provisions.....	7
C. Local Government Action.....	8
D. Substantial Issue Analysis and Conclusion.....	8
2. Roadway Expansion/Hazards	10



A. Appellant's Contentions	10
B. Local Coastal Program Provisions	10
C. Local Government Action	10
D. Substantial Issue Analysis and Conclusion	11
3. Unfair Local Process	11
A. Appellant's Contentions	11
B. Local Coastal Program Provisions	12
C. Local Government Action	12
D. Substantial Issue Analysis and Conclusion	12
C. Substantial Issue Analysis- Conclusion	13
IV. Exhibits	
A. Regional Location Map	
B. Project Vicinity Map	
C. Final Local Action from Monterey County Board of Supervisors, Resolution #02-336 Findings and Conditions	
D. Appellant's Contentions	
E. 1993 Aerial Photo of Project Area	
F. 2001 Aerial Photo of Project Area	
G. Aerial Photo- View from Ocean	
H. Response from Applicant	

I. Local Government Action

The Monterey County Board of Supervisors approved an after the fact permit for roadway improvements on the Doud (APN 417-021-038) and Kleissner (APN 417-021-035) parcels on September 24, 2002 (Resolution #02-336). The proposed project involves an undetermined amount of grading, placement of retaining structures and culverts, in addition to creek crossings, road widening, and paving of two steep areas. The project also includes work within 100 feet of environmentally sensitive habitat areas and on slopes in excess of 30%.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program, and approval of a Combined Coastal Development Permit, subject to 23 special conditions of approval. All permit findings and conditions are included in Exhibit C.

II. Summary of Appellant's Contentions

Originally, this project was appealed by two Coastal Commissioners in addition to HOPE- Help Our Peninsula's Environment. Subsequent to a site visit by Staff and further analysis of the issues initially raised in the Commission appeal, the Commissioner's appeals were withdrawn on 11/18/02. The remaining appellant, HOPE, has appealed the final action taken by the Monterey County Board of



Supervisors (Resolution 02-336), asserting that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan in the following areas:

- a. Environmentally Sensitive Habitat Areas (ESHA)
- b. Roadway Expansion/Hazards
- c. Unfair Board of Supervisors process

The complete text of the appellant's contentions can be found in Exhibit D.

III. Standard of Review for Appeals

The grounds for appeal to the California Coastal Commission under section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable because Section 30603(a)(4) allows for appeals of any development approved by a coastal county that is not designated as the principle permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "YES" vote on the following motion:

I move that the Commission determine that Appeal No. A-3-MCO-02-083 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.



RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-MCO-02-083 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The permit granted by the County is for after-the-fact improvements to roughly 2.5 miles of an existing access road consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and dissipaters, retaining walls (using concrete, geotextile reinforced soil, wood and several Hilfiker walls), a gabion basket drainage crossing, work adjacent to Joshua Creek, short-term erosion control measures, a Soldier Beam retaining wall, five (5) 12" culverts, and concrete paving of two steep areas.

The majority of both the upper and lower roads that are the subject of this permit were, constructed in the 1920's and 30's, and currently pass through the Doud property and end on the Kleissner property. The upper road leads to two existing residences and an abandoned residence located on what is now Fish and Game property. The lower road was previously used to access a sawmill (no longer operating) and a residence that burned completely in 1997. The site on which the burned house sat is being considered for a potential residential purpose in the future.

The project is located in the Big Sur planning area roughly 2 miles south of Garrapatta State Park and just inland of Kasler Point (See Exhibits A & B). The access road is on the eastern side of Highway One, roughly at Post Mile 63, and partially within the critical viewshed (See Exhibit G). The road forks into two roads roughly ½ mile inland from Highway One, and extend roughly a mile and a half inland total (See Exhibits E and F).

Steep slopes such as those present on the properties characterize the majority of the Big Sur area, which is full of canyons containing small streams flowing into the nearby ocean. In this instance, the properties through which the roads run contain maritime chaparral, coastal scrub, and Redwood forest, and the stream at the base of the slopes, Joshua Creek, supports Steelhead trout and California red legged frogs. Surrounding land uses adjacent to the project area include large open space rangeland with small pockets of residential use.

Status of the Roads

Although the access roads were originally constructed in the 1920's and 30's, there was some concern



that the road improvements should be evaluated as a new road under the LCP. Staff initially raised this concern because the potential change in status of the road and its identifying characteristics has the potential to impact the sensitive visual resources as well as the community character of Big Sur. Changing an existing dirt track road into a wider, smoother, paved road that can accommodate a broader variety of vehicles has the potential to increase access to previously inaccessible lots and to increase the amount of traffic and visual impacts. Roads changed in such significant ways should be considered new roads and evaluated under the relevant LCP policies.

However, this is not the case with the Kleissner roads, which clearly are existing roads. Exhibit E shows that the roads existed in 1993 well before the Kleissners purchased the property, and Exhibit F shows the roads subsequent to the improvements. The current road is within the alignment of the existing road, it has not been paved or substantially widened, it remains a one-lane road, and it still presents difficulties for vehicles with a low clearance. Therefore, the policies of the LCP pertaining to new roads do not apply to this project.

B. Analysis of Appeal Issues

1. Environmentally Sensitive Habitat Resources

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- ESHA damage is prohibited.
- Significant ESHA damage has occurred because of this project.

B. Local Coastal Program Provisions

The appellant specifically cites the following Big Sur Land Use Plan (LUP) policies:

- **Policy 5.4.3.K.2.** *New private roads shall meet the following criteria, in addition to meeting all other resource protection policies of this Plan:*
 - c) *A qualified biologist shall certify that any environmentally sensitive habitats present will not be harmed.*
- **Policy 3.3.2.1** *Development, including vegetation removal, excavation, grading, filing [sic], and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.*



C. Local Government Action

Finding numbers 4, 5, and 6 in the County's action (Resolution 02-336, Exhibit C) address environmentally sensitive habitat issues. Finding #4 (Exhibit C, Page 4) states that the project conforms to the Development Standards for ESHA in the Coastal Implementation Plan. Evidence listed here consists of the biological report prepared by Jeff Norman dated November 3, 2001 and the Initial Study with mitigation measures and the Mitigation Monitoring Plan. The project was conditioned (Conditions 17-23, Exhibit C, Pages 15-18) to restore impacted maritime chaparral and remove invasive species; to protect Redwood trees; to restore impacted riparian vegetation; to prevent erosive material from entering Joshua Creek; to minimize surface water diversion from Joshua Creek; to mitigate for impacts to coast buckwheat plants by planting a total of 1,126 seacliff buckwheat plants; and to retain a biologist to identify all sensitive plants to avoid adverse impacts during construction.

Second, Finding #5 of the Final Resolution 02-336 (Exhibit C, Page 4) states that the project conforms to LUP policy 3.3.2.1 and CIP Section 20.145.040.B.1, which prohibit development in ESHA if the impacts of development cannot be reduced to a level of insignificance. Evidence cites the Initial Study for the project, which identified adequate mitigation measures to reduce adverse impacts to a less than significant level and to ensure long-term maintenance of the habitat. The project has been conditioned to include these mitigation measures (Conditions 17-23).

Lastly, the County's action also finds that the project is in compliance with LUP Policy 3.3.2.3 and CIP Section 20.145.040.B.2 with respect to conservation easements that are required over ESHA areas (Exhibit C, Page 4, Finding #6). Evidence for this finding states that the property owners have signed a conservation easement with Santa Lucia Conservancy over the majority of the parcel, including all ESHA on the property. Additionally, Condition of Approval #6 (Exhibit C, Page 14) requires proof of the easement's recordation, and requires a conservation easement over additional sensitive areas as identified in the 2001 biology report. Deeds must be approved prior to final inspection.

D. Substantial Issue Analysis and Conclusion

The project site is located within the Big Sur Planning area, on the eastern side of Highway One near Kasler Point (See Exhibits A & B). This is an area of sparse development and steep slopes that drop dramatically into small streams (See Exhibit G). It is the nature of the slopes to erode periodically and deposit gravelly sediment into the streams, making for excellent Steelhead trout spawning habitat such as Joshua Creek, which runs along the bottom of Garrapatta Canyon along the properties and out to the ocean. The Doud property, through which the majority of the roads run, gradually changes from primarily coastal scrub and maritime chaparral near Highway 1 to lush Redwood forests and riparian vegetation further inland and at the base of the slopes.

The appellant contends that LUP Policy 5.4.3.K.2.C requires a qualified biologist to certify that any ESHA present will not be harmed. While this is an important policy to protect ESHA, it does not apply to this project because the project is not considered a new road but rather improvements to an existing road (See discussion of road status in Finding A). Additionally, as stated in the County's findings, a biology report was prepared for the site by Jeff Norman, who suggests mitigation measures to reduce



impacts below the level of significance, that were then adopted by the County. Therefore, no substantial issue is raised with respect to this policy because the policy does not apply to this project, and even if it did, biological impacts have been adequately mitigated.

The appellant also contends that LUP Policy 3.3.2.1 prohibits development in ESHA that results in any potential disruption of habitat value. Although the County describes all work as being “within 100 feet of ESHA”, not within ESHA itself, and states that the project is consistent with this policy, the Initial Study for this project outlines some biological impacts to ESHA. Sensitive habitats on the site identified by the biological report (Jeff Norman, dated November 3, 2001) include central maritime chaparral, Redwood forest, riparian vegetation and coastal terrace prairie. The report also noted the existence of several special status species on site, such as: Smith’s blue butterfly; southern steelhead trout, California red legged frogs, foothill yellow legged frog and the black swift. The Initial Study states that adverse impacts to these species and habitats could occur through removal of sensitive plants to install culverts and energy dissipaters; because of the location of staging areas; through installation of stream bank stabilization structures, and through siltation caused by road grading without adequate erosion control measures.

Although the project has many potential negative impacts on ESHA, the project also includes mitigation measures to lessen those impacts. The project has been conditioned to restore maritime chaparral removed for a portion of the construction staging area, to protect Redwood tree roots and to avoid the accumulation of sediment at their bases; to restore riparian vegetation on a 1:1 basis with a 100% success criterion; to avoid sedimentation by completing road improvements in accordance with the Watershed Management Plan and hydrology and drainage reports, and to plant a total of 1,126 seacliff buckwheat plants in coastal sage scrub habitat areas where impacts have occurred. While the project may not be entirely in compliance with Policy 3.3.2.1, its impacts have been adequately mitigated, and the net effect of the project will be to prevent further impact to ESHA in the form of sedimentation and to remove invasive vegetation to improve the quality of ESHA areas elsewhere on the properties. As such, the Commission finds that no substantial issue is raised with respect to the contention of impacts resulting from development in ESHA.

Most development resulting from this project is adjacent to ESHA, in which case, the applicable policy is 3.3.2.7. This policy requires development adjacent to ESHA to be compatible with the long-term maintenance of the resource, and requires new land uses to incorporate planning and design features to prevent habitat impacts. Although this is not a new land use, the road improvements were planned and designed to incorporate the best available technology to prevent erosion of the road and slopes, thus preventing further siltation of Joshua Creek. Additionally, the County has conditioned development on this site to minimize impacts to ESHA and to complete road improvements following the recommendations of the Watershed Management Plan and hydrology and drainage reports to further lessen potential impacts to ESHA.

In conclusion, based on the above evidence, including the status of the roads as existing rather than new and that impacts from development in ESHA have been adequately mitigated, the Commission finds that although the project involves a minimal amount of development in ESHA, the project as conditioned is



consistent with LCP policies with respect to ESHA and do not raise a substantial issue.

2. Roadway Expansion/Hazards

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- This project allows for expansion of a roadway by 2-3 times the original width in places.
- The expanded roadway is on nearly vertical slopes.

B. Local Coastal Program Provisions

The appellant specifically references the following Land Use Plan (LUP) policy regarding new roads (See Exhibit D for complete text of appellant's contentions):

- ***Policy 3.2.4.A.7*** *New roads shall avoid steep slopes and shall be located along the margins of forested areas, along natural land contours, or within existing vegetation. Road shall be aligned to minimize removal of native trees, and constructed to minimum standards consistent with the requirements of fire safety and emergency use. Drainage and erosion control measures must be adequate to prevent erosion. During road construction, side-casting of earth materials shall not be permitted; all materials not used for on-site fill shall be removed from the area.*

C. Local Government Action

The County's action (Resolution 02-336, Exhibit C) allows numerous improvements to existing roads. Finding #1 (Exhibit C, Page 2) states that the project, as conditioned, is consistent with the plans policies, requirements and standards of the LCP. Evidence for this finding states that Planning and Building Inspection staff reviewed the project for conformity with the LCP, that the County planner conducted numerous site visits, and lists the various consultants' reports prepared for the project.

Additionally, Finding #3 (Exhibit C, Page 3) states that the project is consistent with the LCP's visual policies. Evidence for this finding states that pursuant to site visits, County staff determined that development that could have impacted the critical viewshed, such as the staging area for construction equipment, was not visible from Highway One. Even though the disturbed areas are not visible from Highway 1, the project was conditioned (Condition #17, Exhibit C, Page 15) to restore these areas for the benefit of habitat restoration, which also results in mitigation for any possible visual impacts.

The County does not make any findings specific to development on steep slopes, however, Finding #8 (Exhibit C, Page 5) states that the project is consistent with the LCP with respect to the use of best watershed management purposes. Evidence to support this finding states that best management practices used include erosion control measures, energy dissipaters at culvert outfalls and slope revegetation in conjunction with a monitoring plan to evaluate the performance of these measures as required by the



conditions of approval.

D. Substantial Issue Analysis and Conclusion

The protection of visual resources in the Big Sur planning area is of primary concern, in addition to the reduction in hazards, especially from erosion on the area's characteristic steep slopes. There are numerous LCP policies designed to protect visual resources in this planning area, especially along scenic corridors and other sensitive visual areas, such as along scenic Highway One. Similarly, the LCP contains policies designed to avoid and reduce geologic hazards.

The appellant contends that the project expanded the roadway to 2-3 times the original width in some areas. Coastal Commission Staff conducted a site visit on November 1, 2002 to determine the extent of road widening that had occurred and found that it would be nearly impossible to widen the road to such an extent and not have a major impact. For the majority of the road alignment, the single-lane roadbed clings to the edge of the slope and abuts solid rock on the inside. Widening such a road would entail a substantial amount of work not only to the rock where it abuts the road, but also to the slope above it to ensure its stability. The sides of the roads and the slopes were not modified in this way, and the road remains a single-lane road.

The appellant may be referring to one area located fairly close to Highway One that was used for an equipment staging area. This area has been widened to accommodate equipment, however this area is also slated for maritime chaparral restoration. Additionally, the LCP contains no policy specifically prohibiting widening, thus, because the road has not been widened to 2-3 times its original width, this contention raises no substantial issue with respect to the certified LCP.

Additionally, the appellant contends that the roadway is located almost entirely on nearly vertical slopes, which is in excess of the maximum 30% slope work allowed by the LCP, and he specifically cites LUP Policy 3.2.4.A.7- which is a visual policy pertaining to new roads. While the road is located on slopes in excess of 30%, it is an existing road. Even if an alternative route with slopes less than 30% were available on the property, making improvements to this existing road is a far superior option (with respect to protection of natural and visual resources) to constructing a new road on lesser slopes, which would involve substantial amounts of grading and an even greater potential for impacts to habitat and visual resources due to erosion hazard. Because this visual policy is relevant to new roads only, it does not apply to this project, which consists of improvements to an existing road, and it presents no substantial issue.

3. Unfair Local Process

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- Lack of fair or impartial hearing.



- No geology report prepared for project.

B. Local Coastal Program Provisions

The appellant specifically references the following LCP policy with respect to hazards:

- ***Policy 3.7.3.A.8*** *Structures and roads in areas subject to landsliding are prohibited [sic](unless) a certified engineering geology report indicates mitigations exist to minimize risk to life and property. Mitigation measures shall not include massive grading or excavation or the construction of protective devices that would substantially alter natural landforms.*

C. Local Government Action

County Finding #1 (Exhibit C, Page 2) states that the project, as conditioned, is consistent with the plans policies, requirements and standards of the LCP. Evidence supporting this finding lists the various consultants' reports prepared for the project, including the Geological and Geotechnical Review and Reconnaissance report prepared by Geoconsultants, Inc. and dated November, 2001. Evidence for Finding #10 regarding the Mitigated Negative Declaration (Exhibit C, Pages 5-6) also notes the submittal of the November, 2001 geotechnical report as part of the Initial Study.

The County makes no finding with respect to mailing of the Board of Supervisors staff report, as there are no applicable LCP policies regarding the mailing of staff reports.

D. Substantial Issue Analysis and Conclusion

The Initial Study circulated by the County in June and July of 2002 contains a copy of the geotechnical report attached to the Initial Study as Exhibit "C". Additionally, the geotechnical report does discuss mitigations to minimize risks to life and property, and states that they are incorporated into the existing improvements and those planned for the future. The Initial Study, under Section 6: Geology and Soils includes a mitigation measure to prevent erosive material from entering Joshua Creek by following recommendations from the Watershed Management Plan and the hydrology and drainage reports. These mitigation measures include placement of additional culverts, retaining walls and erosion control measures such as Best Management Practices. Thus, the Commission finds that the appellant's contention that the project is inconsistent with Policy 3.7.3.A.8 because the proper reports were not submitted does not raise a substantial issue.

With respect to the issue of the appellant not receiving the staff report in a timely fashion, the appellant asked for and was mailed a staff report in advance of the hearing, in addition to being properly noticed by mail, site postings and a newspaper notice. Additionally, the appellant does not contend that he was not noticed properly, and he had the foresight to ask for a continuance prior to the scheduled hearing. The fact that he did not receive the Staff Report far enough in advance to review the report did not preclude him from attending the Board of Supervisors public hearing for this project, at which time he again requested a continuance and was denied. Therefore, he was noticed properly and given an opportunity to voice his opinion at the Board of Supervisors hearing, and the Commission finds that no substantial issue is raised with respect to conformance with noticing procedures.



C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises no substantial issue in terms of compliance with the LCP, with respect to environmentally sensitive habitat, visual issues, or hazard policies. Therefore, as approved and conditioned by Monterey County, Board of Supervisors Resolution #02-336 conforms to LCP policies and protects the scenic and natural resources of the Big Sur area as required by the Monterey County Certified Local Coastal Program.

